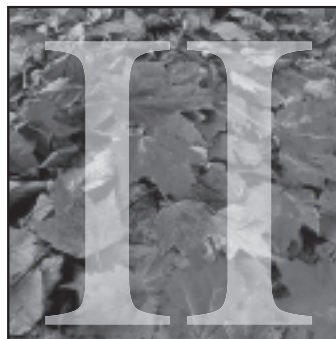


# MICHIGAN DEFENSE *Quarterly*

Volume 23, No. 3 January 2007



## IN THIS ISSUE:

- *Daubert* Principles (Part II of III)
- *Daubert* — A Neuropsychologist's Perspective (Part II of II)
- Uncertainty in Accident Reconstruction
- Insurance Law Update
- Public Relations — Protecting a Client's Reputation
- Third Annual Law Student Writing Competition
- Young Lawyers Section: The Trial (Part 1)
- Court Rules Update
- Guest Column: Child Welfare and Parental Rights

MDTCC

MICHIGAN DEFENSE TRIAL COUNSEL, INC.

THE STATEWIDE ASSOCIATION OF ATTORNEYS REPRESENTING THE DEFENSE IN CIVIL LITIGATION

---

## GUEST COLUMN

# FAILURE AND FUNCTION

By: William C. Whitbeck

---

When I first came on the Michigan Court of Appeals a little over nine years ago, I did not know that the state government could initiate a proceeding to terminate a parent's rights to that parent's children. When these termination cases began to cross my desk, I was initially very wary. After all, the family unit is the building block of much of our concept of a civilized society. To terminate a parent's rights to his or her child—essentially to break that unit apart by judicial fiat—is a daunting prospect for someone with even mildly libertarian tendencies.

After nine years, my view has completely changed. In a significant number of the termination cases that I see on appeal, the question is not whether we should uphold the trial court's termination of the parent's rights. Given the overwhelming evidence of physical and sexual abuse, of prolonged incarceration for serious criminal offenses, of substance abuse, or of pervasive neglect in many of these cases, termination is usually the only option. With this litany of failure, the real question is: what took so long?

The answer is complex. First, perhaps because we are so innately cautious about breaking families apart, we have boxed in the termination procedure with a devilishly detailed set of due process restrictions. Meeting follows meeting, hearing follows hearing and meanwhile in the real world the clock ticks on, the children's birthdays pass, the failures mount up, and the abuse continues and sometimes even worsens.

Secondly, overlaid on these restrictions is the peculiarly American belief that there is no problem without a solution. Thus, in the records that I see on appeal, there are almost invariably a number of heartbreakingly

sincere referrals of the abusive parent to parenting classes, to anger management sessions, to substance abuse counseling, to various types of therapy...and still the abuse continues. There is an apparent belief that if only we could find the right program,

*[P]erhaps because we are so innately cautious about breaking families apart, we have boxed in the termination procedure with a devilishly detailed set of due process restrictions.*

then all would be well. But when on appeal I see the cold record, I am reminded of a stylized kabuki dance, with a pre-ordained outcome. For some among us—those who are hardwired to commit crimes against children—the hard truth is that there is no right program and the ultimate and inevitable result of the system's well-intentioned efforts will be failure and tragedy.

If this is so—and I am willing to concede that I see only the system's failures and none of its successes—

*There is an apparent belief that if only we could find the right program, then all would be well.*

then I suggest that we need to reevaluate our approach. As my wife recently pointed out in a letter to the *Lansing State Journal*, the primary

background of those who are involved in children's protective services is in social work. But at the point that there is criminal abuse and neglect, much of the social worker's training becomes irrelevant. The skills that are paramount are investigative and legal in nature: the task at hand is to document the abuse and then to take immediate, effective action to protect the child. In other words, the caseworker must become a cop, because the function has become one of law enforcement.

If we accept that we are, when dealing with the abuse and neglect of children, in the law enforcement arena, then why not take the next step? If we intend to hire additional investigators and managers at the state level, why not hire the real thing: police officers, either current or retired? Certainly the entrenched social worker bureaucracy will react in horror. Certainly the compassion lobby will throw a hissy fit. But fewer children will suffer and die while we fiddle with a system that all too often fails because it has failed to identify its basic function.